IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

CRP.No. 112 of 2004()

AGAINST THE ORDER DATED 16/10/2003 IN EP 425/2002 IN OS.98/1999 of SUB COURT,NEYYATTINKARA

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REVN. PETITIONER: DECREE HOLDER

SREEDHARAN S/O. APPICHERUKKAN NADAR,
MIDANOORKONAM KIZHAKKUMKARA VEEDU,
ANTHIYOOR DESOM, KOTTUKAL VILLAGE,
TRIVANDRUM DISTRICT.

BY ADV. SRI.J.DEVADANAM
SRI.VINOD J.DEV
SRI.PRAMOD J.DEV

RESPONDENTS: JUDGMENT DEBTORS

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1. LEKSHMI, W/O. SUNDARAN, AJAYA BHAVAN,
NELLIVILA, ANTHIYOOR DESOM, KOTTUKAL VILLAGE,
TRIVANDRUM DISTRICT.

2. AJAYAGHOSH S/O. SUNDARAN, AJAYA BHAVAN,
NELLIVILA, ANTHIYOOR DESOM, KOTTUKAL VILLAGE,
TRIVANDRUM DISTRICT.

3. BINDHUKUMARI D/O. SUNDARAN,
AJAYA BHAVAN NELLIVILA ANTHIYOOR DESOM,
KOTTUKAL VILLAGE, TRIVANDRUM DISTRICT.

4. SINDHUKUMARI D/O. SUNDARAN, AJAYA BHAVAN
NELLIVILA, ANTHIYOOR DESOM, KOTTUKAL VILLAGE,
TRIVANDRUM DISTRICT.

BY ADV. SRI.M.BALAGOVINDAN
SRI.P.M.JOSEPH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP No. 112 OF 2004

ORDER ON IA NO.305 OF 2004 IN CRP NO. 112 OF 2004

DISMISSED

07.08.2007 SD/- PIUS C. KURIAKOSE, JUDGE.

PIUS C. KURIAKOSE, J.

C.R.P. No. 112 OF 2004

Dated this the 7th day of August, 2007

O R D E R

A compromise decree under which the respondents have been made liable for the debt to the extent of assets inherited from one Sri.Sundaran Nadar, their predecessor was put in execution. It was contended by the respondents that prior to the death of Sri.Sundaran Nadar in 1987 the entire property had been conveyed by him and therefore as on the date of compromise decree no estate survived him. In other words, the contention was that the respondents were not legal representatives of Sri.Sundaran Nadar in the sense that they had not inherited any assets.

2. Heard both sides. Sri.Vinod J.Dev, counsel for the petitioner invited my attention to Section 53 of Transfer of Property Act and submitted that the settlement deed of 1997 relied on by the respondents is executed during the pendency of criminal proceedings initiated against Sri.Sundaran Nadar under Section 138 of Negotiable Instruments Act. Sri.Sundaran Nadar Died only on 11.10.99 and the criminal case was closed only on 16.10.99. The settlement deed according to the learned counsel was obviously a fraudulent transaction

created with the objective of defeating creditors like the petitioner.

3. Sri.M.Balagovindan, Learned counsel for the respondent however would refer to the Law Lexicon and submit that an inheritance means an estate descended to the heir immediately on the death of the ancestor by virtue of his right or representation as a descendant. It is cast upon the latter by operation of law. In the instant case there was no estate for Sri.Sundaran Nadar to survive him and it could not be said that the respondents have become owners of the property sought to be attached by 'inheritance'.

The dictionary meaning of 'inheritance' notwithstanding, I do not think that it will be proper to adopt the dictionary meaning and repel the contention of the petitioner which is to the effect that the settlement deed put in defence itself is a fraudulent transaction which is liable to be ignored by the court and the creditors. Of course, Section 53 will show that, it is for the creditors to have the allegedly fraudulent transaction avoided by initiating action. But now it is fairly settled that a contention that the document is fraudulent can be raised even while defending an action or while resisting a claim. Under the impugned order the implications of Section 53 of Transfer of Property Act is not even considered by the learned Munsiff. I set aside the impugned order and

direct the learned Munsiff to pass fresh orders after considering the implications of Section 53 of Transfer of Property Act.

PIUS C. KURIAKOSE, JUDGE

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